confined within the limits set by this provision.[17] The recourse of the individual deprived of his property would be either the unsatisfactory process of suing the utility involved, if the deprivation had been accomplished through its agency,[18] or else the provisions of the fourteenth amendment, invoked upon appeal from the commission's order.[19] But the fourteenth amendment would be flimsy refuge in the case involving no physical taking of the property or total deprivation of its use, but consequential damage merely.[20] And query, as pointed out by Professor McMurray,[21] in the case where the state is itself the aggrieved party, whether the fourteenth amendment could ever serve as refuge?

It is not lightly to be supposed that California desires departure from the policy of protection to private property set forth in her bill of rights. Nor is it a desirable consummation that the workings of her policy with reference to public utilities should give rise to frequent conflicts with the federal Constitution. Would it be amiss, therefore, to suggest that the possibility of conflict be minimized and the policy of the state in these two particulars be made harmonious by conferring upon the commission, in addition to its subsisting power of eminent domain, both power and adequate machinery for making reparation for consequential injuries, under the same general principle set forth in the first article of the California Constitution?[22] *E. M. P.*

CONSTITUTIONAL LAW: NATURALIZATION: CONSTRUCTION OF THE WORD "ANARCHIST" AS USED IN THE IMMIGRATION STATUTES.—That the exclusionary provisions of the federal immigration

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[17] Mr. Justice Henshaw in Pacific Telephone etc. Co. v. Eshleman, supra, n. 5 at p. 658, Cal report; Mr. Justice Sloss, idem, at p. 686, 702; City of San Jose v. R. R. Comm., supra, n. 7.

[18] Cf. for example, Conniff v. San Francisco (1885) 67 Cal. 45, 7 Pac. 41, allowing recovery against a municipality for damages occasioned plaintiff's land by construction which the city, under legislative authorization, was carrying on.

[19] Pacific Telephone etc. Co. v. Eshleman, supra, n. 5.

[20] "Due process of law" includes compensation. See Mr. Justice Sloss in Pacific Telephone etc. Co. v. Eshleman, supra, n. 5 at p. 697, Cal. report, and authorities there cited; Associated etc. Oil Co. v. R. R. Comm. (1917) 176 Cal. 518, 529, 169 Pac. 62; Pacific Trans. Co. v. R. R. Comm. (1917) 176 Cal. 499, 504, 169 Pac. 59. Not, however, where there is neither physical taking nor complete deprivation of use as in Pumpelly v. Green Bay Co. (1871) 13 Wall. 166, 20 L. Ed. 557, but consequential damage merely; physical, as in Manigault v. Springs (1905) 199 U. S. 473, 50 L. Ed. 274, 26 Sup. Ct. Rep. 127; or non-physical, as in the Legal Tender Cases (1871) 12 Wall. 457, 20 L. Ed. 287; L. & N. Ry. v. Mottley (1911) 219 U. S. 467, 55 L. Ed. 297, 31 Sup. Ct. Rep. 265, 34 L. R. A. (N. S.) 671. See Nicholls on Eminent Domain (2nd ed.) § 108 and ff.

[21] In commenting upon the original decision in the principal case. 7 California Law Review, 445.

[22] The power of making reparation is bestowed upon the commission only in the case where a public utility has exacted an excessive amount for services rendered. Public Utilities Act, § 71, Cal. Stats. 1915, p. 164; Palo Alto Gas Co. v. P. G. & E. Co., P. U. R. 1918E 288 (Cal.). Public Utilities Act, § 60, allowing a party to complain of the acts of a utility regardless of whether or not he has been directly damaged thereby, contains no provisions for giving affirmative relief. Cf. the Interstate Commerce Act, §§ 13, 14.

statutes[1] refer to "philosophical" as well as to "dynamic" anarchists, and that the naturalization of a philosophical anarchist who, at the time thereof, denied his true creed will be cancelled as fraudulently obtained,[2] is the holding in *United States v. Stuppiello*.[3] The statutory denunciation is thus construed to deny both admission and citizenship to one who, as a matter of political theory, disbelieves in organized government, even though he does not regard physical force as a justifiable agency for accomplishing its overthrow. It is a proposition well settled by authority that Congress has power to exclude such persons if it chooses to do so[4]; the holding in this case is that Congress had in fact employed language effecting such a result.[5]

Were the interpretation herein adopted to be placed upon a similar expression appearing in a criminal statute it would well merit serious criticism, grounded both in law as violative of constitutional rights of free speech and free thought, and in policy as violative of sound principles of common sense. Noxious ideas and conceptions, like champagne or nitro-glycerine, seem to derive explosive force only through repression; given unobstructed outlet they rarely do more than waste themselves in idle vaporings. Moreover, it would be indefensible to punish as criminal mere entertainment of the idea that Utopia is attained when there is no government save such as the conscience of the individual may impose upon himself. If there be fallacy in such belief it is in regarding anarchy as the harbinger of that perfect state, when the truth is rather that anarchy in its ideal sense may come in consequence of the millennium. These principles the law has recognized, attaching criminal sanction only to advocacy or incitement of violence and disorder.[6]

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[1] 32 U. S. Stats. at L. 1213, 1214, U. S. Comp. Stats. (1918), § 4289¼b, 3 Fed. Stats. Ann. (2nd ed.) 640, setting forth the Act of March 3, 1903, which governed the case here under discussion Infra, n. 5. The provisions of this act, however, have since been amended by the Act of Oct. 16, 1918. U. S. Comp. Stats. (1919 Supp.), § 4289¼b (1). See infra, n. 5.

[2] The naturalization statutes, Act of June 29, 1906, 34 U. S. Stats. at L. 598, U. S. Comp. Stats. (1918), § 4363, 6 Fed. Stats. Ann. 976, deny naturalization to a person "who disbelieves in or is opposed to organized government." Cf. Grahl v. U. S. (1919) 261 Fed. 487, where naturalization of enemy alien procured during the war was cancelled as "illegally" obtained.

[3] (Sept. 10, 1919) 260 Fed. 483.

[4] U. S. ex rel. Turner v. Williams (1904) 194 U. S. 279, 48 L. Ed. 973, 24 Sup. Ct. Rep. 719; U. S. v. Hung Chang (1904) 134 Fed. 19, 67 C. C. A. 93; Lapina v. Williams (1913) 232 U. S. 78, 58 L. Ed. 515 ,34 Sup. Ct. Rep. 196 and cases cited in these opinions.

[5] In the Act of March 3, 1903, supra, n. 1. The Act of Oct. 16, 1918, supra, n. 1, which was not in force at the time the defendant entered the country, covers the facts here presented by expressly excluding "aliens who disbelieve in or are opposed to organized government". Deportation provisions appear in the same act. U. S. Comp. Stats. (1919 Supp.), § 4298¼b (2). For enlightening discussion and historical treatment of these various statutory provisions see Howard L. Bevis, The Deportation of Aliens, 68 University of Pennsylvania Law Review, 97.

[6] See, e. g., the California Syndicalism Act, Cal. Stats. 1919, p. 281, and the language of the courts in such cases as Lewis v. Daily News Co. (1895) 81 Md. 466, 32 Atl. 246, 29 L. R. A. 59; Spies v. People (1887) 122 Ill. 1, 12 N. E. 865, 3 Am. St. Rep. 320; People v. Most (1901) 136 Misc. 139, 73 N. Y. Supp. 220.

The principal case involves a different problem; one in which public opinion will render the ultimate decision. However, with all due deference to proponents of a different view,[7] the position of the court, now expressly indorsed by Congress,[8] seems well fortified by parapets of sound reason. This is no case relating to rights secured to Americans by their Constitution; it concerns the wisdom of permitting one avowedly inimical to American institutions to claim rights and privileges under them. It is but another instance of the traveler and the plane tree, and Esop's principle applies with force undiminished by the lapse of centuries.

Exclusion in such a case is dictated by no base fear of the blighting effect of anarchy upon our own institutions. America has just demonstrated her fearlessness of war, but that fact would not sanction her setting forth, like Gawaine into the enchanted wood, in particular quest of trouble. "By their fruits ye shall know them," and the empirical mind finds much difficulty in establishing identity between the anarchist as idyllically pictured in coat of many virtues, apostle of idealism steeped in human sympathy, and the incarnate anarchist of whatsoever species. And in the case where the idyll is true reflection of the fact the consequence is all too often as Ibañez tells it in "The Shadow of the Cathedral".

Towards anarchistic proselytes already within the gates procedure should indeed be in accordance with the principle that "the best test of truth is the power of the thought to get itself accepted in the competition of the market".[9] For such traders in the particular variety of thought here under consideration, that principle would demand ample opportunity to display their wares. But it should not demand wholesale admission of disciples of any cult, when experience has shown them, either despite or because of their apostolic character, to be, as a class, undesirable additions to American society.[10]

The decision has no force, binding or persuasive, in California, where the provisions of the Syndicalism Act are directed only at advocacy of violence or terrorism.[11] *E. M. P.*

CONSTITUTIONAL LAW: THE EIGHTEENTH AMENDMENT: REFERENDUM.—The feeling current in many of the states that the respective legislatures have not been responsive to the public will with respect to the ratification of the eighteenth amendment to the federal Constitution, has led to attempts to refer the matter to the people in those states. In one notable instance, namely, in Washington, such attempt has been successful, and the Supreme Court of that state in the case of *Howell v. State,*[1] has decided that under

[7] See, dealing with this topic and citing some cases, Deportations and the Law, an editorial in The Nation, Jan. 31, 1920.

[8] In the Act of Oct. 16, 1918, supra, n. 1 and n. 4.

[9] Mr. Justice Holmes, dissenting in Abrams v. United States (1919) 40 Sup. Ct. Rep. 17, 22.

[10] An article on a different subject, but worth reading in this connection is The Disloyalty of Socialism, by Rome G. Brown, 53 American Law Review, 681 (Sept.-Oct. 1919).

[11] Supra, n. 6.

[1] (May 24, 1919) 181 Pac. 920.